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Sea Park East LP v. Williams

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Sea Park E., LP v Williams
2021 NY Slip Op 21077
Decided on March 19, 2021
Civil Court Of The City Of New York, Kings County
Harris, J.
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Decided on March 19, 2021

Civil Court of the City of New York, Kings County

<p>Sea Park East, LP, Petitioner,</p> <p>against</p> <p>Denielle Williams, Respondents.</p>
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David A. Harris, J.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioner's motion for leave to execute the warrant of eviction, and respondent's cross-motion to vacate stipulation, for denial of motion in chief, and for a stay, listed by NYSCEF document number: 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Petitioner commenced this summary non-payment proceeding seeking outstanding rent for Apartment 1546 (Apartment) in the building located at 2920 West 28th Street, in Brooklyn [*2](Building). Respondent interposed an answer, placing the case on the court's calendar. After three adjournments, the parties executed a stipulation of settlement on January 8, 2020 (Stipulation). The Stipulation granted petitioner judgment for \$18,358; respondent agreed to pay that sum by February 28, 2020, and petitioner agreed to make repairs in the Apartment, with access scheduled for January 27th, 2020.

After settlement of this proceeding, the COVID-19 pandemic stopped evictions and limited the court to all but essential applications (Administrative Order 68/20, March 16, 2020). In the ensuing months, executive orders, administrative orders and implementing memoranda incrementally broadened the scope of matters that the court could address. Enacted legislation regulated and restricted the eviction of tenants experiencing financial hardship during the pandemic. Legislation designated L. 220, ch. 127 (Tenant Safe Harbor Act) effective June 30, 2020, precludes the issuance of a judgment of possession or warrant of eviction for rent accruing after March 7, 2020 if the tenant suffered a financial hardship after that date. The statute enumerates factors to consider in determining whether a financial hardship has occurred, stating that "the court shall consider, among other relevant factors (i) the tenant's or lawful occupant's income prior to the COVID-19 covered period; (ii) the tenant's or lawful occupant's income during the COVID-19 covered period; (iii) the tenant's or lawful occupant's liquid assets; (1v) the tenant's or lawful occupant's eligibility for and receipt of cash assistance, supplemental nutrition assistance program, supplemental security income, the New York State disability program, the home energy assistance program, or unemployment insurance or benefits under state or federal law." (Safe Harbor Act [L. 2020, ch. 127], 2[a-d]). The statute precludes a landlord from recovering a possessory judgment for

sums accrued during the covered period but permits the entry of a money judgment for such sums.

After the legislation was enacted, the court issued an administrative order (Administrative order 160/20, August 12, 2020) and an implementing memorandum (Directives and Procedures Memorandum (DRP) 213, August 12, 2020), ultimately requiring that there be a conference prior to the execution of an eviction warrant, the calendaring of which petitioners must seek by motion.

Petitioner makes the instant motion pursuant to DRP 213, and respondent cross moves to vacate the judgment and warrant of eviction, for denial of petitioner's motion on the grounds that respondent is protected under the Safe Harbor Act, or alternatively, for a stay of execution of the warrant of eviction under Real Property Actions and Proceedings Law (RPAPL) § 749[3]. After submission of the motions, the COVID 19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPFA) became law, staying this proceeding for sixty days from its enactment. The CEEFPFA provides that tenants may submit hardship declarations that would additionally stay execution of the warrant of eviction through at least May 1, 2021 in cases where a warrant of eviction had issued. Respondent filed such a declaration in this proceeding. Although the court invited the parties to submit supplemental memoranda to address the change in law effected by passage of the CEEFPFA, neither party elected to do so.

Turning first to the potentially dispositive branch of respondents' cross motion seeking vacatur of the Stipulation, respondent urges that respondent's monthly rent is calculated based upon the household income, but that despite respondent's efforts to demonstrate that her mother had vacated the Apartment in June 2018, petitioner had improperly included her income in its calculations and imposed a rent increase retroactive to June 2018, resulting in the balance upon which this case is premised. Respondent insists that the Stipulation was "inadvertently, [*3]inadvisably and improvidently executed, resulting in a commitment to pay arrears that cannot be accurate." Additionally, respondent's affidavit asserts that a holdover proceeding was commenced in 2018, and that during the pendency of that holdover proceeding and without representation, respondent executed a recertification that resulted in a retroactive increase, which is the genesis of the arrears ultimately resulting in commencement of the instant proceeding.

Petitioner argues that respondent demonstrates no basis for vacatur of the Stipulation, asserting that respondent's claims are conclusory and self-serving. In particular, petitioner asserts that respondent's claim that she was charged an improper rent increase derives from the incorrect premise that rent is calculated based on income in a building subject to the Low Income Housing Tax Credit, as is the Building in this case.

Stipulations are enforceable on their terms (*Hallock v State of New York*, 64 NY2d 224 [1984]) and "will not be undone absent proof that the settlement was obtained by fraud, collusion, mistake, accident or other grounds sufficient to invalidate a contract" (*Crown Realty v Ford*, 35 Misc 3d 129 [A] [App Term 2d, 11th & 13th Jud Dists 2012]). In the context of summary proceedings, when a party has "inadvertently, unadvisably, or improvidently entered into a stipulation that will take the case out of the due and ordinary course of proceeding in the action, and works to his prejudice" (*Matter of Frutiger*, 29 NY2d 143, 150 [1971] [citation omitted]), vacatur has been found appropriate. As applied, when a self-represented litigant "entered into a consent judgment, in the absence of counsel, which awarded the landlord possession of her apartment [and] [t]he tenant had mistakenly believed that the stipulation provided that upon paying the landlord all rent owing, the proceeding would be resolved," vacatur was warranted [*Cabbad v Melendez*, 81 AD2d 626 [2d Dept 1981]).

Here, however, respondent's principal grievance lies with events that transpired prior to the commencement of this proceeding and, specifically, with events occurring during the holdover that preceded this case. It is during that proceeding that respondent executed a recertification that resulted in the retroactive imposition of arrears now sought. Vacatur of the Stipulation in the instant case would have no effect on recertification or on the lease extension agreement executed prior to commencement of this action. The prior holdover proceeding, premised on the failure to recertify, was discontinued after completion of the recertification that respondent now, by collateral attack, seeks to repudiate.

To the extent that respondent has or had remedies arising out of the improper recertification and lease extension, they do not lie in this proceeding. Respondent has not made a showing that the requirements to vacate a stipulation have been satisfied, and the branch of respondent's motion seeking that relief is accordingly denied (*See Union Street Houses Owners LLC v Kriegsman* 70 Misc 3d 143[A] [App Term, 2d, 11th & 13th Jud Dists 2021]).

The motion in chief seeks leave to enforce the warrant of eviction issued pursuant to the Stipulation, and the cross-motion seeks denial of the motion-in-chief, arguing that the Safe Harbor Act and Executive Order 202.66 [9 NYCRR 8.202.66] protect respondent from eviction. The passage of the CEEFPA after the submission of this motion, and respondent's subsequent filing of a hardship declaration, mean that, under all circumstances, execution of the warrant of eviction must be stayed through at least May 1, 2021.

The legislation known as the Tenant Safe Harbor Act (L. 2020, ch 127) provides that no court can issue a warrant of eviction or judgment of possession for rent that accrues or comes due during the "COVID-19 covered period" that began on March 7, 2020 and presently remains in effect against a "residential tenant or other lawful occupant that has [*4]suffered a financial hardship." (Tenant Safe Harbor Act [L 2020, ch 127] §2[1]) Subsequent to the act's passage, the Chief Administrative Judge ordered that "[p]rior to any further proceedings in any residential eviction matter commenced prior to March 17 [2020] including matters in which judgments and warrants of eviction have been issued and delivered to enforcement agents (but not yet executed) the court must hold a status or settlement conference to address a range of subjects related to the case, including the availability or relief under the New York Tenant Safe Harbor Act (L 2020, ch 127) and other state or federal edicts." (Administrative Order 160/20, August 12, 2020). A Directives and Procedures Memorandum subsequently issued by the Administrative Judge of the Civil Court elaborated, indicating that the requirements of Administrative Order 160/20 could be satisfied by the making and determination of a motion (DRP 213, August 12, 2020)."

(24 CFR 246.1)

Of particular relevance here is the fundamental prerequisite for statutory preemption that a state law purport to regulate rent. Close reading of the Tenant Safe Harbor Act reveals that, while it may affect a landlord's capacity to recover a possessory judgment for certain arrears, what it regulates is the conduct of the courts rather than the landlord tenant relationship, and it is utterly silent as to what sums may be charged. It imposes a temporary restriction on a court's capacity to enter possessory judgments or issue warrants of eviction where the court, after considering enumerated factors, determines that a tenant has suffered a financial hardship during a period that commenced on March 7, 2020 and will conclude when the last restrictions imposed by executive order in response to the COVID 19 pandemic have been lifted. The Tenant Safe Harbor Act further provides for its invocation as an affirmative defense in a summary proceeding. The Tenant Safe Harbor Act also expressly provides that

nothing in its terms "prohibit[s] any court from awarding a judgment for the rent due and owing to a successful petitioner in a summary proceeding under article 7 of the real property actions and proceedings law." (Tenant Safe Harbor Act [3]).

A temporary mandate that courts award monetary, rather than possessory judgments for rents due when a respondent demonstrates financial hardship by addressing factors articulated in the statute, simply put, is regulation of the judiciary rather than regulation of rents [[See Cabrera v Humphrey, 192 AD3d 227](#) [3d Dept 2021]]. No term of the landlord-tenant relationship is altered by the Tenant Safe Harbor Act.

As is often noted, "A summary proceeding 'is a creature of statute' (*Century Realty v. Grass*, 117 Misc 2d 224, 225, 457 N.Y.S.2d 731)." ([Rotunno v Gruhill Const. Corp., 29 AD3d 772, 773](#) [2d Dept 2006]), and here, the Tenant Safe Harbor Act, in response to a pandemic, temporarily regulates the conduct of the courts and the implementation of statutes governing summary proceedings during the defined pandemic covered period. The Tenant Safe Harbor Act is not rent regulation, and therefore not pre-empted by the operation of 24 CFR 246.1. Petitioner's arguments in this regard, therefore, fail.

As previously discussed, the Tenant Safe Harbor Act enumerates factors that "the court shall consider" in determining whether there has been financial hardship (Tenant Safe Harbor Act, §2[2][b]). The use of the word "shall" in the statute constitutes mandatory language (*See Lanzi v Lanzi*, 298 AD2d 53, 57 [2d Dept 2002]), rendering the factors enumerated by the statute the minimal required considerations.

Here, however, respondent has addressed some of these factors only in a generalized manner and others not at all, presenting no documentary evidence or specific assertions as to income before or during the COVID-19 covered period, and no evidence or statements whatsoever as to liquid assets. While respondent does assert that an application for a "one shot deal" had been commenced, respondent provides neither documentation of the application nor any of the financial specifics that would necessarily need to be submitted in support of that application. Respondent's assertion that "I was working two jobs at that time... However, in March 2020, the COVID-19 pandemic changed everything. I lost one of my jobs and had my hours reduced at the other job" lacks detail and documentary support. Nowhere does respondent disclose the amount of income from either job or the extent to which that income changed, and respondent discloses only that a "one-shot deal" application had become "stalled," without elaboration as to when it was filed, how much was sought, or when

respondent last attempted to advance it. The failure to address in more than a general and cursory manner the statutorily enumerated factors compels the conclusion that respondent has not properly asserted a claim under the Tenant Safe Harbor Act as modified by Administrative order. Respondent has not sufficiently raised a defense to execution of the warrant of eviction as she has failed to establish that she is entitled to the protections of the Tenant Safe Harbor Act. As noted earlier, however, respondent has filed a hardship declaration that, by operation of the CEEFPA, mandates a stay of execution of the warrant of eviction.

Accordingly, respondent's cross-motion is denied and petitioner's motion is granted to the extent of staying execution of the warrant of eviction to the latter of May 1, 2021 or the date upon which petitioner obtains a re-issued warrant of eviction containing language mandated by the CEEFPA.

This is the decision and order of the court.

Dated: Brooklyn, New York

March 19, 2021

David A. Harris, J.H.C.

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